

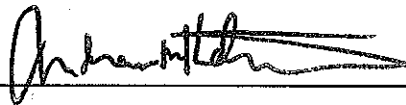
4/11/16

10:52 AM.

Chapter No. 411
16/HR26/R1829SG
AM / EW

HOUSE BILL NO. 819

Originated in House



Clerk

HOUSE BILL NO. 819

AN ACT TO REENACT SECTIONS 25-43-4.101 THROUGH 25-43-4.108, MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI SMALL BUSINESS REGULATORY FLEXIBILITY ACT; TO AMEND REENACTED SECTION 25-43-4.103, MISSISSIPPI CODE OF 1972, TO REVISE THE MEMBERS THAT THE GOVERNOR, LIEUTENANT GOVERNOR AND SPEAKER OF THE HOUSE OF REPRESENTATIVES APPOINT TO THE SMALL BUSINESS REGULATORY REVIEW COMMITTEE; TO REVISE THE LIST OF NOMINEES SUBMITTED BY CERTAIN BUSINESS ORGANIZATIONS THAT THE APPOINTING AUTHORITIES MAY MAKE APPOINTMENTS FROM; TO REMOVE THE THREE-YEAR TERM LIMITATION FOR APPOINTED MEMBERS OF THE COMMITTEE; TO AMEND REENACTED SECTION 25-43-4.104, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMITTEE TO SUBMIT AN ECONOMIC IMPACT STATEMENT IN CERTAIN SITUATIONS; TO PROVIDE ADDITIONAL TIME FOR THE COMMITTEE TO SUBMIT THE ECONOMIC IMPACT STATEMENT IF AN AGENCY HAS NOT COMPLETED CERTAIN REQUIREMENTS; TO REPEAL SECTION 25-43-4.109, MISSISSIPPI CODE OF 1972, WHICH IS THE REPEALER ON THE MISSISSIPPI SMALL BUSINESS REGULATORY FLEXIBILITY ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 25-43-4.101, Mississippi Code of 1972, is reenacted as follows:

25-43-4.101. This article may be cited as the "Mississippi Small Business Regulatory Flexibility Act."

SECTION 2. Section 25-43-4.102, Mississippi Code of 1972, is reenacted as follows:

25-43-4.102. As used in this article:

(a) "Agency" is defined in Section 25-43-1.102.

(b) "Department" means the Mississippi Development Authority.

(c) "Committee" means the Small Business Regulatory Review Committee.

(d) "Rule" is defined in Section 25-43-1.102, except that the term "rule" shall not include emergency or preemptive rules.

(e) "Small business" means a for-profit business entity employing fewer than one hundred (100) full-time employees or having gross annual sales or revenues of less than Ten Million Dollars (\$10,000,000.00).

SECTION 3. Section 25-43-4.103, Mississippi Code of 1972, is reenacted and amended as follows:

25-43-4.103. (1) There is established a Small Business Regulatory Review Committee.

(2) The duties of the committee shall be to:

(a) Provide agencies with input regarding proposed permanent rules which may have an economic impact upon small business and for which a notice of intended action is published by the Secretary of State on or after July 1, 2012;

(b) Review any rule promulgated by a state agency for which notice has been given by the agency to the committee that the proposed rule has or may have an economic effect upon small

business and make recommendations to the agency and or the Legislature regarding the need for a rule or legislation;

(c) Petition an agency to amend, revise, or revoke an existing regulation based on an economic impact on small business; and

(d) Advise and assist agencies in complying with the provisions of and perform any and all acts and duties set forth and authorized in the Mississippi Small Business Regulatory Flexibility Act.

(3) The committee is assigned to the Mississippi Development Authority for administrative purposes only. The department shall act as a coordinator for the committee, and shall not be required to provide legal counsel for the committee.

(4) The committee shall consist of twelve (12) members, appointed as follows:

(a) Four (4) members to be appointed by the Governor, one (1) of whom shall be the Executive Director of the Mississippi Development Authority, or his designee;

(b) Four (4) members to be appointed by the Lieutenant Governor, two (2) of whom may be State Senators who own small businesses; and

(c) Four (4) members to be appointed by the Speaker of the House of Representatives, two (2) of whom may be State Representatives who own small businesses.

Any legislative member appointed to the committee shall serve as an ex officio, nonvoting member.

(5) The appointing authorities shall appoint members of the committee for which no qualifications are specified under subsection (4) from:

(a) Lists of nominees, which may include small business owners, association representatives and small business regulatory advisors who have legal or accounting experience, submitted by the following business organizations:

- (i) National Federation of Independent Business;
- (ii) Mississippi Manufacturers Association;
- (iii) Mississippi Retail Association;
- (iv) Mississippi Petroleum Marketers and Convenience Stores Association;
- (v) Mississippi Minority Contractors Association;
- (vi) Mississippi Economic Council;
- (vii) Mississippi Farm Bureau Federation; and
- (viii) Any local chamber of commerce; and/or

(b) Small business owners or operators not affiliated with or nominated by the business organizations listed in paragraph (a) of this subsection.

(6) Appointments to the committee shall be representative of a variety of small businesses in this state. * * * Except as otherwise provided in this section, appointed members shall be

either current or former owners or principal officers of a small business.

(7) The initial appointments to the committee shall be made within sixty (60) days from July 1, 2012. The Mississippi Development Authority shall provide the name and address of each appointee to the Governor, Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Secretary of State.

(8) (a) Members initially appointed to the committee shall serve for terms ending December 31, 2014. Thereafter, appointed members shall serve two-year terms that expire on December 31 of the second year.

(b) The Governor shall appoint the initial chair of the committee from the appointed members for a term ending December 31, 2014. Subsequent chairs of the committee shall be elected by the committee from the appointed members for two-year terms that expire on December 31 of the second year.

(9) Members of the committee shall not receive any compensation.

(10) The committee shall meet as determined by the chair of the committee.

(11) A majority of the voting members of the committee shall constitute a quorum to do business. The concurrence of a majority of the members of the committee present and voting shall be necessary to make any action of the committee valid.

* * *

SECTION 4. Section 25-43-4.104, Mississippi Code of 1972, is reenacted and amended as follows:

25-43-4.104. (1) Prior to submitting proposed permanent rules for adoption, amendment, revision or revocation pursuant to the Mississippi Administrative Procedures Law, the agency shall comply with Section 25-43-3.105(2)(d) in order to determine whether the proposed rules affect small business by preparing an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the proposed regulation;

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) A statement of the probable effect on impacted small businesses;

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, including the following regulatory flexibility analysis:

(i) The establishment of less stringent compliance or reporting requirements for small businesses;

(ii) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(iii) The consolidation or simplification of compliance or reporting requirements for small businesses;

(iv) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(v) The exemption of some or all small businesses from all or any part of the requirements contained in the proposed regulations.

(2) If the economic impact statement reflects that a proposed rule may have an economic effect upon small business, the agency shall submit a copy of the proposed rules and the economic impact statement to the committee for its review and comment pursuant to the review and comment provisions of the Mississippi Administrative Procedures Law. During the committee review process, the director or the director's designee of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(3) Within the review and comment period, if the committee determines that the proposed rules may have an economic effect upon small business, the committee may submit to the agency its comments concerning the proposed regulation including its specific recommendations.

(4) A small business that is affected or aggrieved by final agency action to enforce a rule or regulation is entitled to review of agency compliance with the requirements of this act.

(5) To ensure that any final rule continues to minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes, each agency shall, during any periodic review required by this chapter, consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state and local governmental law or rules; and
- (e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(6) If an agency's economic impact statement reflects that a proposed rule will have no economic impact upon a small business, or if an agency fails to file an economic impact statement and the committee otherwise determines that the agency's proposed rule will have an economic impact, then the committee may file its own economic impact statement for the agency's proposed rule with the Secretary of State and notify the appropriate agency that the

economic impact statement was filed. When the committee files its economic impact statement, if an agency has not completed the regulatory process that is required for the applicable proposed rule to become final, the committee shall have an additional sixty (60) days from the date of filing its economic impact statement with the Secretary of State to submit its comments concerning the proposed regulation and any specific recommendations to the agency, for its consideration. During the additional sixty (60) days' committee review process, the director of the promulgating agency, or his or her designee, shall be available at the request of the committee to comment on the proposed regulation.

SECTION 5. Section 25-43-4.105, Mississippi Code of 1972, is reenacted as follows:

25-43-4.105. (1) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has an impact on small business. In addition to distinctly setting forth how the regulation has had an impact on small business, the committee's petition shall address the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other federal, state and local governmental laws or rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule.

The petition may also renew any earlier comments made by the committee when the regulation was first promulgated, as provided by Section 25-43-4.104(3). Furthermore, the committee's petition shall make a specific recommendation concerning the regulation, including, but not limited to, whether the regulation should be amended, revised or revoked.

(2) The agency shall submit a written response of its determination to the committee within sixty (60) days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Mississippi Administrative Procedures Law. If the agency determines that the petition is without merit, the committee may submit within thirty (30) days additional data in support of its petition.

SECTION 6. Section 25-43-4.106, Mississippi Code of 1972, is reenacted as follows:

25-43-4.106. The committee shall make an annual report by January 15 of each year to the Governor, the Lieutenant Governor

and the Speaker of the House of Representatives and provide detailed information on the committee's activities during the previous calendar year.

SECTION 7. Section 25-43-4.107, Mississippi Code of 1972, is reenacted as follows:

25-43-4.107. (1) Notwithstanding any other law of this state, any agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

(a) The small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation;

(b) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule; or

(c) The agency determines that the small business is making a good-faith effort to comply with the statute, ordinance or rule.

(2) Subsection (1) of this section shall not apply when:

(a) A small business fails to exercise good faith in complying with the statute, ordinance or rule;

(b) A violation involves criminal conduct;

(c) A violation results in serious health, safety or environmental impact; or

(d) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

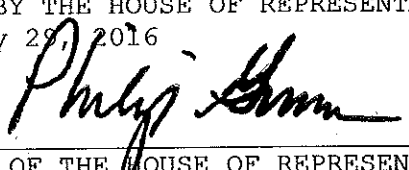
SECTION 8. Section 25-43-4.108, Mississippi Code of 1972, is reenacted as follows:

25-43-4.108. The Mississippi Small Business Regulatory Flexibility Act shall not apply to proposed permanent rules by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives.

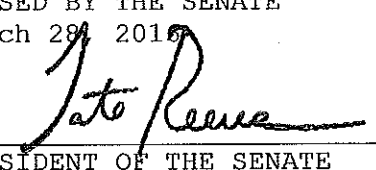
SECTION 9. Section 25-43-4.109, Mississippi Code of 1972, which is the repealer on the Mississippi Small Business Regulatory Flexibility Act, is repealed.

SECTION 10. This act shall take effect and be in force from and after July 1, 2016.

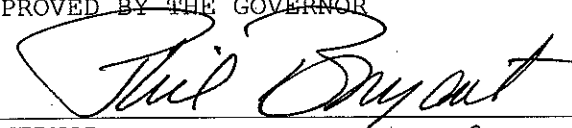
PASSED BY THE HOUSE OF REPRESENTATIVES
February 29, 2016


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 28, 2016


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

April 11, 2016
10:52 AM